

REMARKS

Applicant has reviewed the final Office Action mailed on September 4, 2003, and the references cited therewith.

Claims 1, 2, 9-11, 15-17, 25, and 27 are amended. Claims 1-27 are pending in this application.

Applicant respectfully submits that the amended claims do not raise any new issues, but merely clarify the claims in view of the cited references. Accordingly, Applicant believes the new amendments place the claims in condition for allowance and respectfully requests entry of the amendments and reconsideration of the claims under 37 CFR 1.116.

§102 Rejection of the Claims

Claims 1-5, 7, 8, 10, 11, 17-20, 25 and 26 were rejected under 35 USC § 102(b) as being anticipated by Majkrzak (U.S. Patent No. 5,359,835).

Claims 1-5 and 7

Applicant has amended claim 1 to better describe the subject matter recited in the claim. Applicant believes claim 1 is not anticipated by the cited reference since the reference does not include each limitation recited in the claim. For instance, a weed control system including a weed contacting member suspendable within the body of water proximate a bed of weeds, and a drive member for automatically moving the weed contacting member in a repeating, circular arc pattern over the bed of weeds, "the weed contacting member freely hanging down from a support member located at a surface of the body of water such that the weed contacting member repeatedly brushes against any weeds in the bed of weeds."

Applicant notes that the plain meaning of "brushes" is -- *to pass lightly over or across : touch gently against in passing. Merriam-Webster's Collegiate Dictionary, 10 ed.*-- This is in contrast to the roller 24 of Majkrzak which rolls along the bottom of the lake, pulling up weeds and stirring up sand and silt. (Col. 4, lines 25-30). Moreover, Applicant has amended claim 1 to better describe how the weed contacting member brushes against the weeds. Applicant has amended the claim to point out that by "freely hanging down" from a support member at a surface of the water, the weed contacting member can brush against the weeds. Again, the Majkrzak device is a heavy roller 24 which uses fins to pull itself along the bottom of a lake to pull weeds and disturb the weed bed. Roller 24 does not hang freely from housing 18 so as to

lightly brush over any weeds. In contrast, the roller 24 is supported by and drives along the floor of the lake. (See Abstract). This is a completely different mode of operation than recited in the present claim and teaches away from the present invention.

Claims 2-5 and 7 include each limitation of parent claim 1 and are also not anticipated by the cited reference. Moreover, regarding claim 4, Applicant again traverses the assertion that Majkrzak discusses changing the direction of his roller “when a pre-determined time limit is reached,” as asserted in the Office Action. At col. 7, lines 60-63, Majkrzak discusses that his device can be activated by a timer; and at col. 2, lines 5-7 Majkrzak discusses that the weed remover can be operated automatically at pre-selected times through the use of a timer. However, these are not the same as “wherein the drive member is reversible and is configured to change a direction of movement of the weed contacting member when a pre-determined time limit is reached,” as recited in claim 4. Majkrzak does not discuss changing directions when a pre-determined time limit is reached.

Regarding claim 5, Majkrzak does not include “a pair of opposing nozzles which alternately eject a jet of water to drive the drive member.” The Examiner asserts, “Majkrzak discloses that the weed remover system may be powered by a gas engine, solar panels, waves or other methods ... “waves” or water as a general power means.” Applicant believes that Majkrzak cites a gas engine, solar panels, waves or other methods as means to provide electrical power to drive the motor that turns the roller. However, “a pair of opposing nozzles which alternately eject a jet of water to drive the drive member,” as recited in claim 5 is not anticipated by a discussion of “waves” as a power source. Reconsideration and allowance is respectfully requested.

Claims 8, 10, 11

Applicant traverse the rejection of claim 8. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ2d 1897, 1908 (Fed. Cir. 1990). Applicant cannot find in Majkrzak a weed control system including a weed contacting member and water activated means including “a nozzle which emits water to develop thrust” for moving the weed contacting member in a repeating pattern through the body of water such that the weed contacting member repeatedly contacts any weeds in a path of the weed contacting member. Again, Majkrzak may discuss using wave

power to somehow power his device, but he in no way discloses using a nozzle to develop thrust for moving the weed contacting member, as claimed. This feature of the present claimed invention is not in any way taught or suggested by Majkrzak. Reconsideration and allowance is respectfully requested.

Claims 17-20

Applicant has amended claim 17 to better describe the subject matter recited in the claim. Applicant believes claim 17 is not anticipated by the Majkrzak reference since the reference does not include each limitation recited in the claim. For instance, a weed control system including a weed contacting member, means for moving the weed contacting member through the body of water proximate a bed of weeds, and “a controller which, in response to a timer, periodically reverses the direction of the means for moving such that the weed contacting member is repeatedly moved back and forth across the bed of weeds and such that if the weed contacting member gets stuck within the water, the controller will reverse the direction of the means for moving and the weed contacting member will become free once the timer reaches a time limit.”

Claims 18-20 include each limitation of their parent claim and are therefore also not anticipated by the cited reference.

Claims 25 and 26

Applicant has amended claim 25 to better describe the subject matter recited in the claim. Applicant believes claim 25 is not anticipated by the Majkrzak reference since the reference does not include each limitation recited in the claim. For instance, a method of controlling weeds in a body of water, the method comprising repeatedly “brushing a bed of weeds” with a weed contacting member “which is suspended and freely hanging down from a support member located proximate a surface of the body of water.”

Again, Applicant notes that the plain meaning of “brushes” is to pass lightly over or across, or to touch gently against in passing. Applicant has amended claim 25 to better describe how the weed contacting member freely hangs down from the support member so as to brush against the weeds. As discussed above, the Majkrzak device is a roller that drives itself along the bottom of the lake, removing weeds and stirring up sand and silt. (Col. 4, lines 25-30). Roller

24 does not hang freely from housing 18 so as to brush over any weeds. In contrast the roller is supported by and drives along the floor of the lake. (See Abstract).

Claim 26 includes each limitation of its parent claim and is also not anticipated by the cited reference. Reconsideration and allowance is respectfully requested.

Claims 12-14 were rejected under 35 USC § 102(b) as being anticipated by Blumenfeld (U.S. Patent No. 2,919,027). Applicant traverses. Applicant believes claim 12 is not anticipated by the Blumenfeld reference since the reference does not include each limitation recited in the claim. For instance, a weed control system including a support member, a buoyant member coupled to the support member to keep the support member at or above a surface of the body of water, a weed contacting member suspended from the support member to descend beneath the surface of the body of water, and a driver to move the support member across the surface of the body of water in a repeating pattern such that “the weed contacting member also moves in a repeating pattern and repeatedly brushes against any weeds beneath the support member.”

Applicant notes that the claim recites that the “weed contacting member” also moves in “a repeating pattern.” In contrast, the Blumenfeld device includes a swimming pool cleaning apparatus. There is no discussion in Blumenfeld for how his device could be modified for eliminating weeds from a lake. Blumenfeld’s device includes a motor 39 located on land that drives a member 56 over the water. Connected to member 56 is a flexible hose 90 having a nozzle 92 at the end. Member 56 apparently moves in a repeating pattern over the water. However, regarding hose 90 and nozzle 92, Blumenfeld states that water “jetting out of the nozzle causes it to trace a random path over the bottom of the pool.” (col. 3, lines 36-38). In operation the Blumenfeld device works by stirring up sediment by a jet of water out of nozzle 92 and filtering the stirred up water. (col. 1, lines 47-49). Even if, *arguendo*, Blumenfeld could be applicable to remove weeds, the reference does not include a weed contacting member moving in a “repeating pattern” to repeatedly brushes against any weeds beneath the support member. Again, the Blumenfeld, swimming pool cleaner operates under a random motion of nozzle 92 and hose 90 and is not adaptable to be used as a weed control system.

Claims 13 and 14 include each limitation of their parent claim and are therefore allowable over the cited reference. Reconsideration and allowance is respectfully requested.

Claim 27 was rejected under 35 USC § 102(b) as being anticipated by Thompson et al., (U.S. Patent No. 4,137,693).

Applicant has amended claim 27 to better describe the subject matter recited in the claim. Applicant believes claim 27 is not anticipated by the Thompson et al. reference since the reference does not include each limitation recited in the claim. For instance, coupling a first end of a support member to a stationary unit proximate the body of water such that the support member extends over a surface of the body of water; suspending a weed contacting member from the support member such that the weed contacting member is located beneath the surface; and “moving the support member in a repeating circular arc pattern such that the weed contacting member repeatedly brushes against any weeds located proximate the weed contacting member to disintegrate the weeds.”

In contrast, Thompson et al. does not brush weeds, and does move in a circular arc pattern. The Thompson et al. device includes a rake mounted to a motor to move the rake backward and forward. The rake has teeth to engage weeds and *pull* the weeds out of the lake bottom as the rake is powered back out of the lake. (Abstract, Thompson et al.). This is different from the present system which utilizes a suspended weed contacting member to brush against any weeds. The present system does not pull weeds out of the bottom of the lake, instead it repeatedly “brushes” over them to gradually disintegrate the weeds. Moreover, the circular arc pattern allows for a greater area of coverage than the Thompson device. Reconsideration and allowance is respectfully requested.

§103 Rejection of the Claims

Claim 6 was rejected under 35 USC § 103(a) as being unpatentable over Majkrzak, (U.S. Patent No. 5,359,835) in view of Beaumont (U.S. Patent No. 6,374,519). Claim 6 depends from claim 1 and is not obvious in view of the cited references since the secondary reference does not overcome the deficiencies of the Majkrzak reference discussed above. Reconsideration and allowance is respectfully requested.

Claims 21-24 were rejected under 35 USC § 103(a) as being unpatentable over Thompson et al., (U.S. Patent No. 4,137,693) in view of Majkrzak (U.S. Patent No. 5,359,835).

Applicant traverses the asserted combination of Thompson et al. and Majkrzak. Thompson describes a rake being pulled back and forth while Majkrzak describes a roller rolling along a lake floor. Each is trying to accomplish the same task in completely different manners. There is no motivation to combine the roller of Majkrzak with the rake of Thompson. Such a combination would be redundant and thus there is no suggestion to combine.

Moreover, Applicant traverses the suggestion that either reference provides a suggestion or motivation for positioning “a reversible driver coupled proximate a second end of the elongated support member.” The claimed device recites that a support member is reversibly driven by a driver coupled to a second end of the support member. Applicant cannot ascertain any manner of how Thompson could be modified to be driven from its second end. The Office Action asserts the modification would be a mere rearrangement of parts. However, MPEP § 2144.04 VI. C. states that a rearrangement of parts may be unpatentable if “shifting the position ... would not have modified the operation of the device.” Here, driving Thompson from the second end would completely change its operation and it is not clear how it could even be done. MPEP § 2144.04 VI. C. goes on to state that merely because the parts could be rearranged it “is not sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without benefit of appellant’s specification, to make the necessary changes in the reference device.” Here, there is simply no motivation or suggestion to modify the Thompson device as suggested. Reconsideration and allowance is respectfully requested.

Allowable Subject Matter

Claims 9, 15, and 16 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 9, 15, and 16 have been rewritten as suggested. Claims 10 and 11 have been rewritten to depend from allowable claim 9.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 359-3267 to facilitate prosecution of this application.

The Commissioner is hereby authorized to charge the additional claims fee of \$129.00, and any additional fees deemed necessary, to Deposit Account 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O.Box 1450, Alexandria, VA 22313-1450, on this 4 day of November, 2003

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